

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

November 7, 2000

IN RE:)	
)	
BELLSOUTH TELECOMMUNICATIONS,)	DOCKET NO. 99-00936
INC.'S TARIFF TO OFFER A SPECIAL)	
PROMOTION FOR BUSINESS)	
CUSTOMERS SUBSCRIBING TO)	
EXCHANGE LINES WITH HUNTING)	

ORDER DENYING TARIFF

This matter came before the Tennessee Regulatory Authority ("Authority or TRA") at the regularly scheduled Authority Conference held on February 15, 2000, for consideration of Tariff No. 99-00936 filed by BellSouth Telecommunications, Inc. ("BellSouth") on December 2, 1999. Upon review of BellSouth's tariff and the entire record in this matter and after hearing argument from BellSouth, the Directors of the Authority voted unanimously to deny BellSouth's tariff.

Background

On December 2, 1999, BellSouth submitted a letter ("Submission") to the Telecommunications Division of the Authority, not to the Executive Secretary of the Authority. The Submission stated that from Monday, December 6, 1999 through March 4, 2000, BellSouth would be offering 40% to 80% discounts to business customers with less than a \$10,000 per month account and 4 to 20 flat rate or Business plus exchange lines with hunting. The discount would vary according to the length of the contract, as follows: a 40% discount for a one year commitment, a 60% discount for a two year commitment, and an 80% discount for a three year

commitment. The Submission stated that termination charges would apply if the customer terminates prior to the expiration of the commitment date.

BellSouth presumed that this Submission was a “special promotion,” effective upon one day’s notice to the Authority. By letter of December 10, 1999, the Authority’s Executive Secretary notified BellSouth that the Submission was not a “special promotion” and therefore, BellSouth should not consider the Submission to be in effect. The Executive Secretary’s notification stated that BellSouth should properly file this Submission as a regular tariff filing in accordance with TRA Rule 1220-4-1-.04, so as to allow the Authority’s Directors adequate opportunity, thirty (30) days, to consider the matter.

On December 15, 1999, BellSouth responded to the Executive Secretary’s notification of December 10, 1999 and stated that BellSouth disagreed with such conclusions regarding the Submission. Specifically, BellSouth disagreed that the Submission should be refiled as a regular tariff filing with a thirty (30) day notice period, consistent with TRA Rule 1220-4-1-.04, simply to enable the Directors to publicly deliberate the proposed termination language. BellSouth further questioned whether the Authority’s Executive Secretary acted within statutory authority by deeming the Submission ineffective on the basis that it was not a “special promotion.” BellSouth acknowledges that “our [December 2, 1999] letter may not have clearly indicated the rates to which these discounts apply,” apologizes for the confusion and points out that the discounts apply only to the hunting charges, not the business line rates, as BellSouth’s Submission ambiguously indicates.¹

At the regularly scheduled Authority Conference on January 11, 2000, the Authority first considered whether the Executive Secretary had the authority to notify BellSouth that the

¹ December 15, 1999 letter of Charles Howorth of BellSouth to David Waddell, TRA Executive Secretary.

submission was not to be offered to the public until it was specifically approved by the Authority. After deliberation, the Directors unanimously determined that the Executive Secretary acted within his authority as delegated by the Directors pursuant to Tenn. Code Ann. §§ 65-1-204 and 65-1-209.² These statutes allow the Authority to delegate to the Executive Secretary the power to review and refuse to accept for filing any document submitted contrary to the rules of the Authority or laws of the State.³

Next, the Authority determined that the Submission was not in effect from January 11, 2000, on a going-forward basis. However, until the Authority deliberated the Submission on the merits, so as not to penalize customers for BellSouth's actions, any consumer(s) who chose to take advantage of this Submission prior to January 11, 1999 would be permitted to continue under such agreement with BellSouth. The Authority then directed BellSouth to brief whether this Submission constitutes a "special promotion" under the TRA Rules and BellSouth's tariffs.

The Authority issued a data request to BellSouth on January 19, 2000 and BellSouth provided its responses on January 25, 2000. The Authority issued a further data request to BellSouth on January 28, 2000 and BellSouth responded on February 1, 2000. No person sought to intervene in this docket.

² Tenn. Code Ann. § 65-1-204(c): Policies established by the authority shall be communicated to the executive secretary by the chair, and the chair shall be responsible for ensuring that policies established by the authority are fully executed by the executive secretary.

Tenn. Code Ann. § 65-1-209: The executive secretary shall be the chief administrative officer of the Tennessee regulatory authority and shall have the power and the duty to conduct ordinary and necessary business in the name of the authority, such duties to include, but not be limited to, the following: . . .

(7) Perform such other duties as the Tennessee regulatory authority may require or as may be required by statute.

³ While any such action of the Executive Secretary can, of course, be appealed to the Directors, failure to adhere to such determination pending review by the Authority may in the future result in adverse consequences.

Findings and Conclusions

At the regularly scheduled Authority Conference held on February 15, 2000, after considering the entire record, including BellSouth's brief and oral argument, the Directors determined that BellSouth's Submission did not meet the definition of a "special promotion" as recognized by the Authority. As such, the Submission was improperly proffered as an alleged "special promotion" rather than as a regular tariff pursuant to TRA Rule 1220-4-1-.04. Therefore, the Directors unanimously denied the Submission.

First, the Authority found that this Submission simply does not meet the Authority's well-established definition of special promotion. BellSouth contends that it is not aware of such a definition of the term "special promotion" contained within a tariff. This contention is without merit. Until November 1999, less than one month prior to the date of the Submission, BellSouth's General Subscribers Services Tariff ("GSST") contained the following definition of special promotion:

. . . These *promotions* are a temporary waiver of certain recurring and/or nonrecurring charges or a one-time credit to a customer's account . . .

In addition to being in BellSouth's GSST, this definition of "special promotion" is also currently included in BellSouth's existing Tennessee intrastate Access Service Tariff (E2.7.10.1). Finally, BellSouth's tariffs in Tennessee, Kentucky, Florida, Mississippi and Louisiana provide evidence that there is a well-established definition of "special promotion."

The term "special promotion," as historically recognized by the Authority and as currently used in BellSouth's access tariffs, refers to an offering of a temporary waiver of certain recurring and/or nonrecurring charges or a one-time credit to a subscriber's account. This

description is clearly not applicable to this Submission, and therefore this Submission was improperly proffered under the designation of “special promotion.”

Next, the Authority found little relevancy in BellSouth’s comparison of its promotions with those provided in an unregulated industry. In its brief, BellSouth references established industries in which competitive forces dictate price and quality of services. However, such industries exist without a dominant provider that can implement measures to effectively prevent competition. Here, the competitive telecommunications environment is in its infancy and includes a dominant provider that, without certain anti-competitive safeguards and measures, could thwart or significantly hinder the development of a competitive marketplace. The TRA has the responsibility for establishing and implementing certain safeguards in accordance with both state and federal mandates.

As part of those safeguards, in many instances state law requires that BellSouth and other incumbent local exchange carriers be treated differently than other carriers in the market. In its brief, BellSouth argues that it should be allowed to employ the same promotional strategies as its competitors, however, BellSouth fails to point out that the 1995 Tennessee Telecommunications Act explicitly contemplates more restrictive treatment for an incumbent’s services than for CLEC services.⁴ These restrictions remain unless and until this Authority explicitly exempts ILEC services from these restrictions by finding that “existing or potential competition is an effective regulator of the price of those services.”⁵ Such an exemption has not been granted for any BellSouth service. Therefore, it is not only consistent with, but also a requirement of, state

⁴ Tenn. Code Ann. § 65-5-208(c).

⁵ Tenn. Code Ann. § 65-5-208(b).

law to subject BellSouth to more restrictive treatment than its competitors, particularly when anti-competitive effects may otherwise result.

This proceeding is a prime example of why complex tariffs such as this Submission should not be permitted to become effective upon one day's notice. BellSouth's two paragraph Submission, directed to the Telecommunications Division with an ambiguous (or simply incorrect) notice of the offering fails to include all the terms and conditions of such offering, and does not provide the information required for the Authority to determine compliance with the applicable laws. For example, the Submission does not indicate whether the offering is available to resellers at wholesale discounts and no support is provided that demonstrates that the 80% discounts comply with the statutory price floor. The Submission indicated that the discount applies to business lines with hunting, yet on December 15, 1999, nine days after BellSouth began offering the discount, BellSouth notified the Authority that the discount applied only to the hunting charges, not the business lines. It simply is not possible for the Authority to make decisions that are in the public interest and properly enforce state laws without being provided all the relevant facts, and without having more than one day's notice to review those facts.

Assuming automatic approval of this so-called promotion, BellSouth sent the Submission directly to the Telecommunications Division without filing a copy with the Executive Secretary. The Directors determined to prohibit, on a going-forward basis, any "promotions" that go into effect upon one day's notice if such "promotions" go beyond simply promoting a service. Any alleged promotion, such as the Submission here, that locks up a customer for multiple years in a manner that effectively prevents the customer from switching to a competitive carrier must not be permitted to go into effect without the Authority first having an opportunity to conduct a timely review.

The instant Submission intends to lock customers into long-term contracts, and clearly does not meet the Authority's well-established definition of "special promotion." Nevertheless, so as to prevent confusion in the future, the Authority hereby reiterates its position that only promotions offering a temporary waiver of certain recurring and/or nonrecurring charges or a one-time credit to a subscriber's account shall be considered to be special promotions that may be filed to become effective after one day's notice to the Authority. All other submissions must be filed notice in accordance with TRA Rule 1220-4-1-.04, which provides that tariff changes require thirty (30) days notice to the Authority.

Finally, the Authority also found that this Submission, with its one, two, or three year term contracts not only does not meet the traditional definition of "special promotion," but because it was submitted under the guise of a 90-day "special promotion," the length of the resulting contract terms in the Submission are anticompetitive. The Directors reached this conclusion because the long-term contracts that derive from this Submission effectively operate to prevent customers from choosing a competitor of BellSouth during the entire term of an agreement, not just during the 90-day period of the "special promotion."

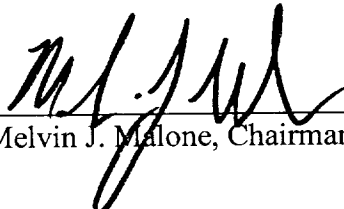
This Submission as a "special promotion" anytime after January 11, 2000 is unanimously denied.⁶ It does not meet the well-established definition of a special promotion as currently exists in BellSouth's access tariff and as existed in BellSouth's General Subscribers Services Tariff until November, 1999. Only promotions offering a temporary waiver (90 days or less) of certain recurring and/or nonrecurring charges or a one-time credit to a subscriber's account are considered to be "special promotions" and may be filed to become effective on one day's notice

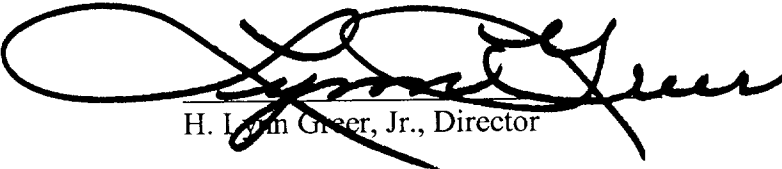
⁶ While an issue arose whether termination provisions applicable to contracts entered into between December 6th and January 11th were excessive, a majority of the Directors determined not to address this issue.

to the Authority. All other filings require thirty (30) days notice in accordance with TRA Rule 1220-4-1.04, "TARIFF CHANGES REQUIRE 30 DAYS NOTICE TO THE COMMISSION."

IT IS THEREFORE ORDERED THAT:

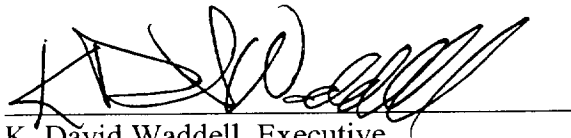
BellSouth Telecommunications, Inc.'s Tariff No. 99-00936 is denied effective January 11, 2000.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive